

STATE OF TENNESSEE

Office of the Attorney General



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Reply to:
Consumer Advocate and Protection Division
Post Office Box 20207
Nashville, TN 37202

May 13, 2004

Honorable Deborah Taylor Tate
Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

**IN RE: Petition of Chattanooga Gas Company for Approval of Adjustment of its
Rates, Charges, and Revised Tariff
Docket 04-00034**

Dear Chairman Tate:

Enclosed is an original and thirteen copies of the Consumer Advocate and Protection Division's Motion to Extend The Hearing Time To Nine Months in regard to Docket No. 04-00034. Please file same in this docket. Copies are being sent to all parties of record.

Should you have any questions, please contact me at (615) 741-8700. Thank you.

Sincerely,

Vance Broemel
Vance Broemel
Assistant Attorney General

CC: All Parties of Record.

**IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

**APPLICATION OF CHATTANOOGA
GAS COMPANY, A DIVISION OF
PIEDMONT NATURAL GAS COMPANY,
INC., FOR AN ADJUSTMENT OF ITS
RATES AND CHARGES, THE
APPROVAL OF REVISED TARIFFS AND
APPROVAL OF REVISED SERVICE
REGULATIONS**

DOCKET NO. 04-00034

**CONSUMER ADVOCATE'S MOTION TO EXTEND THE HEARING TIME TO NINE
MONTHS**

Comes Paul G. Summers, Attorney General for State of Tennessee, through the Consumer Advocate and Protection Division of the Office of the Attorney General, pursuant to Tenn. Code Ann. § 65-5-203, and hereby files its Motion to Extend the Hearing Time to Nine Months. Currently, it appears that the TRA is attempting to hold a hearing and issue a final order in the Chattanooga Gas Company rate case within six months of the filing of the Chattanooga Gas Company's petition for a rate increase, filed January 26, 2004. Tennessee law, however, permits the TRA to take up to nine months to issue a final order so long as the company is allowed the option of putting the proposed rate increase into effect under a bond to cover any refund. See Tenn. Code Ann. § 65-5-203. In the present case, it is now clear that attempting to hold the hearing within six months of January 26, 2004 jeopardizes the Consumer Advocate's right to a full and fair hearing because as of this time the Consumer Advocate has been unable to obtain the necessary factual information to which it is entitled. As will be shown below, there is

simply not enough time for the Consumer Advocate to receive responses to its discovery requests; review those responses; incorporate that material into its witnesses' testimony; allow time for Chattanooga Gas to file rebuttal testimony; give the TRA directors and staff adequate time to review that rebuttal testimony and other material prior to the hearing; hold a hearing on the merits; and allow the TRA directors and staff time to review, deliberate and decide this case.

If the Consumer Advocate is not allowed adequate time to prepare its case, the consumers of Tennessee could suffer irreparable harm in the form of an unjustified rate increase. Accordingly, the TRA should grant the Consumer Advocate's Motion to Extend the Hearing Time to Nine Months, and the Company should be allowed to put its rates into effect under bond if it so chooses.

ARGUMENT

1. Chattanooga Gas filed its Petition for a rate increase on January 26, 2004. By the Company's own admission, the Petition did not meet the Minimum Filing Guidelines for rate cases. See Response of Chattanooga Gas Company to the Consumer Advocate and Protection Division's Motion for Leave to Serve Additional Data Requests at page 3, paragraph 6 ("Not only are these guidelines optional, contrary to the arguments of the CAPD, CGC did file the majority [i.e., not all] of the items identified in the Guidelines well in advance of the CAPD's filing to intervene in this docket. (Several of the items identified in the Guidelines are proprietary and confidential and will be provided subject to protective order.)") (emphasis added).

2. The Consumer Advocate is not contesting the right of Chattanooga Gas to ignore the Minimum Filing Guidelines. The Consumer Advocate does, however, maintain that the Company's voluntary decision not to follow the Guidelines means that necessary information has not yet or only belatedly reached the Consumer Advocate. For example, certain material subject to protective order was delivered only on May 10, 2004.

3. The Consumer Advocate filed its Petition to Intervene on February 26, 2004.

4. Even though its Petition to Intervene was not yet granted, the Consumer Advocate delivered a set of Discovery Requests to Chattanooga Gas on April 1, 2004. The Consumer Advocate acknowledged to Chattanooga Gas at that time that Chattanooga Gas was under no obligation to respond to the requests if it did not want to because the Consumer Advocate's Petition to Intervene had not yet been acted on by the TRA. Letter from Consumer Advocate, Vance Broemel, to Chattanooga Gas, Billye Sanders, April 1, 2004. Again, as with the Minimum Filing Guidelines, Chattanooga Gas was absolutely under no legal obligation to do anything to expedite the case if it did not want to. The Consumer Advocate merely believed that providing the requests in advance would give Chattanooga Gas a heads up and, hopefully, lead to a quicker turn around time once a contested case was convened.

5. Chattanooga Gas, however, did not respond to the discovery requests before the hearing officer in this case held a pre-hearing conference on April 19, 2004. In fact, Chattanooga Gas informed the Consumer Advocate that Chattanooga Gas would not respond to any discovery requests over 40, pursuant to TRA Rule 1220-1-2-.11(5). Yet again, this was Chattanooga Gas's perfect right to assert the 40 question limit. The Consumer Advocate, however, also had the

perfect right to file a motion with the Hearing Officer for leave to serve additional data requests.

6. Once the Consumer Advocate's Petition to Intervene was granted at the conference on April 19, 2004, the Consumer Advocate served its discovery requests on Chattanooga Gas. Since the number of requests exceeded 40, the Consumer Advocate also filed a Motion for Leave to Serve Additional Discovery Requests at the same time. (At the time of the Consumer Advocate's request, the TRA Staff had been allowed to ask over 130 requests; the Consumer Advocate, of course, has reviewed those requests in an effort to avoid duplication.).

7. True to its word, Chattanooga objected to all discovery requests over 40 on April 30, 2004, in its Response of Chattanooga Gas Company to the Consumer Advocate and Protection Division's Motion for Leave to Serve Additional Data Requests. The Consumer Advocate then filed yet another pleading supporting its need for the additional requests on May 7, 2004. See Consumer Advocate's Reply to Response of Chattanooga Gas Company to the Consumer Advocate and Protection Division's Motion for Leave to Serve Additional Data Requests.

8. On May 10, 2004, the Hearing Officer held another pre-hearing conference and resolved most issues related to various motions to compel. The Consumer Advocate believes that all parties would join in expressing their appreciation for the care, patience and hard work shown by the Hearing Officer in resolving these issues. In addition, the Hearing Officer discussed possible hearing dates in June, such as June 23, 24, 25 and June 28 and 29.

9. At that conference of May 10, 2004, the Hearing Officer also requested Chattanooga Gas and the Consumer Advocate to try to resolve the issue of whether Chattanooga

Gas would respond to more than 40 questions from the Consumer Advocate. Unfortunately, no agreement has been reached yet so the issue of whether the Consumer Advocate can serve more than 40 requests is still pending.

10. Tenn. Code Ann. § 65-5-203 provides that the TRA may take up to nine months to decide a case so long as the company is allowed the choice of putting its rates into effect under bond:

(a) When any public utility shall increase any existing individual rates, joint rates, tolls, fares, charges, or schedules thereof, or change or alter any existing classification, the authority shall have power either upon written complaint, or upon its own initiative, to hear and determine whether the increase, change or alteration is just and reasonable. The burden of proof to show that the increase, change, or alteration is just and reasonable shall be upon the public utility making the same. In determining whether such increase, change or alteration is just and reasonable, the authority shall take into account the safety, adequacy and efficiency or lack thereof of the service or services furnished by the public utility. The authority shall have authority pending such hearing and determination to order the suspension, not exceeding three (3) months from the date of the increase, change, or alteration until the authority shall have approved the increase, change, or alteration; provided, that if the investigation cannot be completed within three (3) months, the authority shall have authority to extend the period of suspension for such further period as will reasonably enable it to complete its investigation of any such increase, change or alteration; and provided further, that the authority shall give the investigation preference over other matters pending before it and shall decide the matter as speedily as possible, and in any event not later than nine (9) months after the filing of the increase, change or alteration. It shall be the duty of the authority to approve any such increase, change or alteration upon being satisfied after full hearing that the same is just and reasonable.

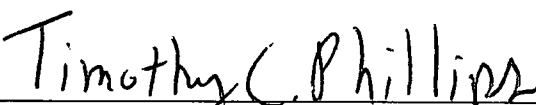
(b)(1) If the investigation has not been concluded and a final order made at the expiration of six (6) months from the date filed of any such increase, change or alteration, the utility may place the proposed increase, change or alteration, or any portion thereof, in effect at any time thereafter prior to the final authority decision thereon upon notifying the authority, in writing, of its intention so to do; provided, that the authority may require the utility to file with the authority a bond in an amount equal to the proposed annual increase conditioned upon making any refund ordered by the authority as hereinafter provided.

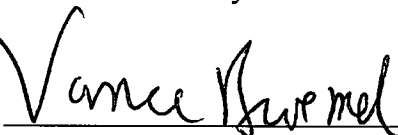
Tenn. Code Ann. § 65-5-203 (emphasis added).

11. In the present case, the Consumer Advocate now believes that if a hearing is held in June there is a great likelihood that the Consumer Advocate will not have adequate time to prepare its case. In particular, the Consumer Advocate has not received responses to its first discovery requests and information in the responses to those requests is necessary in order for the Consumer Advocate's witnesses to prepare their testimony. Thus, there is simply not enough time for the Consumer Advocate to receive responses to its discovery requests; review those responses; incorporate that material into its witnesses' testimony; allow time for Chattanooga Gas to file rebuttal testimony; give the TRA directors and staff adequate time to review that rebuttal testimony and other material prior to the hearing on the merits; hold a hearing on the merits; and allow the TRA directors and staff time to review, deliberate and decide this case. To force our witnesses to hastily prepare their case is not in the interests of Tennessee consumers, particularly when there is a remedy at hand.

12. Accordingly, the TRA should grant the Consumer Advocate's Motion to Extend Hearing Time to Nine Months.

RESPECTFULLY SUBMITTED,


TIMOTHY C. PHILLIPS, B.P.R. # 012751
Assistant Attorney General


VANCE L. BROEMEL, B.P.R. # 11421
Assistant Attorney General
Office of the Attorney General
Consumer Advocate and Protection Division

by Vance Broemel

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(615) 741-3533

Dated: May 13th 2004

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been served via the methods indicated on this 13th day of May, 2004, to the following:

Via first-class U.S. mail, postage prepaid:

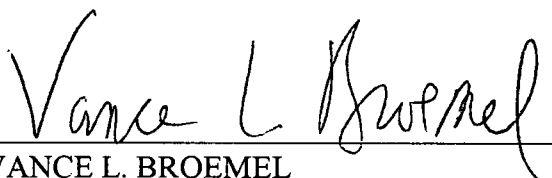
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